

IN THE COURT OF THE SUBORDINATE JUDGE, KANNUR

Present: Sri. Reghunath. N.S, Sub Judge.

Wednesday, the 28th day of January, 2026/8th Magha, 1947.

ORIGINAL SUIT No: 31/2021

Beausha Kallalathil, D/o. Late Kallalathil	]	
Narayanan & W/o. M.U. Madan Mohan, aged	]	
52 years, House wife. Resident at Madan	]	Plaintiff
Villa, Kannur-1 amsom, desom, Bellard Road,	]	
Kannur.1, Kannur District. Mob. 7559918770.	]	

Vs.

1. Bibith Kallalathil, S/o. Late Kallalathil	]	
Narayanan, aged 54 years, business,	]	
residing at Sairam, Malikaparamba,	]	
Kadachira amsom & desom,	]	
PO. Kadachira, Kannur District.	]	
2. Jigin Kallalathil, S/o. Late Kallalathil	]	Defendants
Narayanan, aged 50 years, residing at	]	
Syamantakam, Puzhathi amsom & desom,	]	
Pallikunnu, Kannur-4, Kannur District.	]	
3. Thazhe Thayullathil Pushpa, W/o. Late	]	
Kallalathil Narayanan, aged 72 years,	]	
House wife, residing at Jigin Nivas, Talap,	]	
Kannur-II amsom, Talap deson, Opp.	]	
Ramananda Textile, Kannur.2, Kannur	]	
District.	]	

This suit coming on 13th day of January, 2026 for final hearing before me in the presence of Sri. E. Muhammed Shafi, Advocate for the Plaintiff; of S/Sri. Sanooj. A and Sajeev. P, Advocates for Defendant No.1, of Smt. Shashi.D.Nambiar, Advocate for Defendant Nos. 2 & 3 and having stood over for consideration to till this day, the Court delivered the following:-

J U D G M E N T

Suit for partition.

2. Plaint averments, in short are as follows:

Plaintiff and defendant Nos. 1 and 2 are children of Kallathil Narayanan. He died on 30.11.2019. 3rd defendant is his wife. Deceased Kallathil Narayanan was conducting a textile shop at Kannur in the name and style of 'Ramananda Handloom'. The plaint schedule property belonged to deceased Kallathil Narayanan. Item No. 1 of plaint schedule property described as 'B' plot is situated in Puzhathi amsom desom. Item No.2 described as Plot 'A' is situated in Kannur-II amsom. Both properties are situated as a single plot. After the death of deceased Narayanan, defendant Nos. 1 and 2 were keeping strange attitude

against the plaintiff. The defendant discouraged the plaintiff from visiting their mother, 3rd defendant. The plaintiff demanded the defendant Nos.1 and 2 to make partition of the plaint schedule property. However, defendant Nos.1 and 2 turned down the request. On 13.11.2020, the first defendant disclosed the plaintiff that their father has executed and registered a Will during his lifetime. Second defendant handed over a certified copy of the Will to the plaintiff. In the Will, it is stated that out of 82 cents of property scheduled and an extent of 5 cents shall be set apart in surplus to his wife, defendant No.3 additionally, bank balance etc., There was certain stipulation regarding conduct of the business namely, 'Ramananda Handloom'. Even though, the plaintiff continued his request to make partition of the plaint schedule property the defendant Nos. 1 and 2 did not heed to it. The plaint schedule property comprises 7 rooms, which are occupied for business purpose of defendant Nos. 1 and 2. The prevailing market value of the same would come to minimum ₹ 30,000/-

(Rupees Thirty thousand only) per month as monthly rent. Accordingly, defendant Nos.1 and 2 will get ₹3,60,000/- (Rupees Three lakh sixty thousand only) per year as a rent. Defendant Nos.1 and 2 are not paying mesne profit to the plaintiff. The plaintiff prayed only for getting future mesne profit from the defendant from the date of institution of the suit. Since, the defendant Nos.1 and 2 are not ready to make partition of the plaint schedule property. The plaintiff filed the suit for partition at the intervention of the Court. The plaintiff challenged the validity of the Will allegedly executed by their father. Hence the suit.

3. Pursuant to summons, defendant Nos. 1 to 3 entered appearance. They filed separate written statements taking up various contentions. The first defendant filed written statement with counterclaim. A brief note of written statement filed by defendant No.1 is as follows:

The relationship among the parties as stated in the plaint has been admitted by defendant No.1. Defendant No.1 admitted that the business 'Ramanada Handloom' was conducting their father. Their father had entrusted the said business to defendant No.1. Accordingly, defendant No.1 is actively carrying out the business. He denied that the plaintiff had demanded partition. Consequently, defendant No.1 disclosed existence of the registered Will allegedly executed by their father. Defendant No.1 did not admit the execution and existence of the Will. No such Will was executed and registered by their father, he contended. The mental and physical conditions of their father as on the date of executing the Will are also under challenge. He denied the market value of the room situated in the plaint schedule property which would fetch minimum of ₹ 30,000/-(Rupees Thirty thousand only) as monthly rent. It is only a mere speculation. He denied earning of mesne profit from the plaint schedule property. As per the final decree application No. 09/12 dated 31.10.2015 along with

other property situated in Bangalore were allotted in favour of their father and mother T.T. Pushpa, jointly. After the death of their father, defendant No.3, plaintiff's sister and defendant No.2 did not allow defendant No.1 to continue the business 'Ramanadha Handloom'. They forcibly closed the shop and kept the keys with them. Defendant No.3, mother even lodged a petition to the Deputy Superintendent of Police, Kannur. The Deputy Superintendent of Police, Kannur doubted genuineness of the Will. Accordingly, the defendant No.1 submitted that the plaintiff is not entitled to get any relief as he claimed for.

4. Defendant No.2 filed a written statement stating that a registered Will was executed by his father during his lifetime. As already stated, the relationship between the parties is also admitted. Defendant No.1 expressed his willingness to honour the desire of their deceased father expressed through registered Will. The defendant No.2 submitted that he has no objection in the partitioning in the

plaint schedule property in accordance with the terms contained in the registered Will.

5. Defendant No.3 also filed a written statement admitting the relationship among the parties. He admitted execution of the Will by his father during his lifetime. According to the defendant No.2, it was defendant No.2 who was availing maximum monetary advantages from the business and the plaint schedule property. The defendant No.1 expressed his willingness to make partition of the plaint schedule property in terms of the Will executed by their father. He accordingly, prayed for partition of the plaint schedule property.

6. After considering the rival contentions of both parties, the following issues have been framed for trial.

- 1) Whether the property is liable to be partitioned among plaintiff and defendants ?
If so, what are the shares entitled by parties?
- 2) Reliefs and costs?

7. Evidence in this case consists of oral testimony of plaintiff as PW1 and documentary evidence of Exts.A1 to A10. On 07.01.2026, when the suit is included in the list, the learned counsel for defendant No.1 reported “no instruction”. Therefore, name of D1 was called in the open Court. However, he had no representation. Accordingly, he was heard *exparte*.

8. Learned counsel for defendant Nos.2 and 3 submitted that they have no evidence to adduce in this case.

9. Heard both sides and perused the records.

10. **Issue No.1:-** The plaintiff got himself examined as PW1. She filed proof affidavit in lieu of examination-in-chief wherein, she reiterated the entire facts set out in the plaint. Father of plaintiff and defendant Nos.1 and 2 and also husband of defendant No.3 died on 30.11.2019. His death certificate is Ext.A5. Upon perusing the evidence on

record, it can be seen that plaintiff and defendant Nos.1 and 2 are children of deceased Kallathil Narayanan and defendant No.3 is his wife. Ext.A1 is the certified copy of F.D.I.A.9/21 in O.S.177/95 of Sub Court, Kannur, by virtue of which, deceased Kallathil Narayanan obtained his share. Ext.A2 is the delivery warrant. Ext.A3 is the certified copy of the delivery account. Ext.A4 is the delivery receipt showing the delivery of the respective property allotted to father of plaintiff and defendant Nos. 1 and 2. Ext.A6 is the certified extract of Building Tax Assessment Register in respect of the building situated in the plaint schedule property bearing No. TP. 46/1, 2 and 3. Ext.A7, Building Tax Assessment Register in respect of the building Nos. T.P.46/4 and 5.

PW1 deposed that after the death of their father, defendant Nos.1 and 2 were not in good terms with her. The defendant Nos.1 and 2 were also not ready to share the mesne profit eking out from the plaint schedule

properties. When PW1 demanded partition of the plaint schedule property she was informed that their deceased father had executed a Will in respect of the property described therein. Ext.A8 is the certified copy of the Will No.126/17 of S.R.O. Kannur. Original of Ext.A8 is produced and marked as Ext.A9. The Certified copy of Ext.A9 is the Ext.A10. PW1 deposed that by virtue of Ext.A8 she is ready to make partition of the plaint schedule property in four equal shares. Apart from these, plaintiff expressed his willingness to give five cents of additional property in addition to, the share entitled to the 3rd defendant, mother. According to PW1, even if the execution and registration of Ext.A9, Will is disputed, she is entitled to $\frac{1}{4}^{\text{th}}$ share in the plaint schedule property by succession. He also prayed for getting future mesne profit at the rate of Rs.30,000/-(Rupees Thirty thousand only) from the date of suit.

After considering the evidence on record, it can be

seen that father of PW1 and defendant Nos.1 and 2 and husband of defendant No.3 died on 31.11.2019 as evident from Ext.A5. It is true that PW1 produced registration copy of Ext.A9, Will as Ext.A8 and its certified copy Ext.A10 before the Court. However, mere production of even the original Will, Ext.A8 is not sufficient to prove examination and taken before the Court. In other words, without proving execution of the Will as provided under law particularly by complying Section 68 of the Indian Evidence Act 1872 (Section 71 of Bharathiya Sakshya Adhiniyam, 2023 (B.S.A).) it cannot be said that Ext.A8, Will has been proved before the Court for giving effect to the terms and conditions in the Will, Ext.A8. The proponent of the Will, Ext.A8 has to prove execution of Ext.A8, Will under Section 68 of the Indian Evidence Act and Section 63(c) of the Indian Succession Act 1925. In the case on hand, no steps are seen taken by either parties in the proceedings to prove Ext.A8, Will under Section 68 of the Indian Evidence Act 1872. Therefore, no partition can be ordered under Ext.A8.

Then, arises question, how the property inherited and partitioned among the legal heirs of deceased father?. PW1 in his affidavit filed in lieu of examination chief has expressed her willingness to make the partition of the plaint schedule property into four equal shares. In the absence of proof of Ext.A8, Will no doubt, the parties to the proceedings will be governed under the provisions of the Hindu Succession Act 1956. In other words, the provisions under the Hindu Succession Act come into play when the Will in question is not proved. As already stated, defendant No.2 and 3 have no objection in making partition of the plaint schedule property. However, defendant No.2 took various contentions against the suit claim. In the absence of proof of the Will, Ext.A8 the natural succession will take place upon the property. Therefore, though Ext.A8, Will is produced no purpose will be served by producing Ext.A8, Will. Therefore, the plaint schedule properties are to be partitioned under the provisions of the Hindu Succession Act. Issue No.1 is found accordingly.

11. Issue No.2 :- In the result, a preliminary decree can be passed in the suit. Accordingly, a preliminary decree is passed, as follows.

- 1). The plaint schedule properties are found partible into four equal shares out of which, $\frac{1}{4}^{th}$ share is allotted to the plaintiff.
- 2). The question of granting mesne profit as claimed by the plaintiff is deferred to final decree proceedings.
- 3). The costs of the suit shall borne out of estate.
- 4). Reservations and equities if any, shall be decided during final decree proceedings.
- 5). Either parties to the suit may file an application for passing a final decree within 30 days from today. In case, no such application is filed the office shall put up the file for proceeding under Rule 18 of Order XX of the CPC.
- 6) Call on 04.03.2026.

(Dictated to the confidential assistant, typed by her, corrected and pronounced by me in open court on this the 28th day of January, 2026).

SUB JUDGE

APPENDIX:

Exhibits marked for the Plaintiff:-

- A1. 31.10.2015 Cerified copy of Final Decree in FDIA.9/2012 in OS.177/95 before the Sub Court, Kannur.
- A2. 04.01.2018 Cerified copy of delivery Warrant in EP.32/2017 before the Sub Court, Kannur.

- A3. 04.01.2018 Cerified copy of delivery account in EP.32/2017 before the Sub Court, Kannur.
- A4. 04.01.2018 Cerified copy of delivery receipt in EP.32/2017 before the Sub Court, Kannur.
- A5. 24.12.2019 Downloaded copy of the Death Certificate of K. Narayanan
- A6. 20.02.2021 Building Tax Assessment extract of Kannur Corporation (1 page).
- A7. - do -
- A8. 11.10.2017 Copy of Document No. 126/III/17 of SRO, Kannur.
- A9. 11.10.2017 Will No. 127/2017 executed by Kallalathil Narayanan
- A10. ----- Cerified copy of Registered Will No. 127/2017 executed by Kallalathil Narayanan

Witness examined for Plaintiff:-

PW1. Smt. Beausha Kallalathil

Exhibits marked for the Defendant: Nil

Witness examined for the Defendant:- None

Third Party Exhibit: Nil

Sd/-
SUB JUDGE

//True copy//

SUB JUDGE

Pt/-

Fair/copy of Judgment in
O.S.31/2021: Dated: 28.1.2026.